

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

PIMENIO VELA HERRERA,

8:12CV321

Plaintiff,

v.

**MEMORANDUM  
AND ORDER**

TAMMY MOWRY, in their  
individual capacity, MONTE  
HOVIC, in their individual capacity,  
JESSE ROBINS, in their individual  
capacity, HAHN, Deputy, in their  
individual capacity, STEPHENS,  
Deputy, in their individual capacity,  
and JEREMY BRUNGARD, in their  
individual capacity,

Defendants.

This matter is before the court on Plaintiff's "Motion to Show Cause Why Plaintiff's Claims Against Jesse Robins Should Not Be Dismissed." (Filing No. [34](#).) Plaintiff's Motion is a response to the court's order from June 28, 2013, which required Plaintiff to "show cause why Plaintiff's claims against Defendant Jesse Robins should not be dismissed" for failure to serve him within 120 days. (*See* Filing No. [33](#).) In his Motion, Plaintiff explains that he has been diligent in his attempts to serve Jesse Robins, and he seeks additional time in which to serve Jesse Robins. (Filing No. [34](#) at CM/ECF pp. 1-2.)

Rule 4 of the Federal Rules of Civil Procedure requires the court to extend the time for service if a "plaintiff shows good cause for the failure [to serve]." [Fed. R. Civ. P. 4\(m\)](#). Plaintiff's allegations, when liberally construed, show good cause for Plaintiff's failure to serve Jesse Robins within 120 days. Accordingly,

IT IS THEREFORE ORDERED that:

1. Plaintiff will be given 45 days from the date of this Memorandum and Order to serve Jesse Robbins.

2. If Plaintiff does not serve Jesse Robins within 45 days, Plaintiff's claims against Jesse Robins will be dismissed without prejudice and without further notice, and this action will proceed only as to Plaintiff's claims against the other five defendants.

3. The clerk's office is directed to set a pro se case management deadline with the following text: September 9, 2013: Deadline for Plaintiff to serve Jesse Robins. If service is not accomplished by this date, dismiss Plaintiff's claims against Jesse Robins and enter a progression order as to remaining defendants.

DATED this 25<sup>th</sup> day of July, 2013.

BY THE COURT:

s/ Joseph F. Bataillon  
United States District Judge

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